

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Roosevelt McDonald,	:	
	:	
Petitioner(s),	:	
	:	Case Number: 1:09cv589
vs.	:	
	:	Chief Judge Susan J. Dlott
Warden Chillicothe Correctional Institution,	:	
	:	
Respondent(s).	:	

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on August 23, 2010 a Report and Recommendation (Doc. 20). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 21).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendation should be adopted.

Since petitioner's claim is procedurally defaulted, the Court does not reach the merits of his claim. Even if it were to do so, the Court is in no better position to find a violation of Ohio Revised Code § 2941.25 than the Court of Appeals since the Court does not have underlying facts.

Accordingly, petitioner procedurally defaulted in presenting his claims to the state courts and has shown no excusing cause and prejudice. Therefore, his petition is **DISMISSED** with

prejudice. Since reasonable jurists will not disagree with this conclusion, petitioner is denied any requested certificate of appealability. The Court will certify that any appeal will be objectively frivolous and petitioner will not be permitted to proceed *in forma pauperis*.

IT IS SO ORDERED.

s/Susan J. Dlott  
Chief Judge Susan J. Dlott  
United States District Court